

**Coyne International Enterprises Corp., d/b/a Coyne Textile Services and Chauffeurs, Teamsters and Helpers Local Union No. 175, affiliated with the International Brotherhood of Teamsters, AFL-CIO. Case 9-CA-33978**

September 30, 1998

**DECISION AND ORDER**

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On March 10, 1998, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed cross-exceptions and a supporting brief. The Respondent also filed an answering brief to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions<sup>2</sup> and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Coyne International Enterprises Corp., d/b/a Coyne Textile Services, Huntington, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup> The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are correct. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> In affirming the judge's conclusion that the Respondent's decision to close its Charleston, West Virginia facility did not violate Sec. 8(a)(3), we do not rely on his determination that the General Counsel failed to present sufficient evidence warranting the inference of unlawful motivation for the decision. We find that the Respondent's animus toward grievances filed by the Charleston terminal steward, coupled with unlawful statements linking the terminal closure to the steward, met the General Counsel's threshold burden. We agree, however, with the judge's alternative finding that the Respondent showed that it would have closed the Charleston terminal, even in the absence of the steward's grievance activities, because of a continuing and worsening loss of sales volume there and the potential savings to be gained from the closing.

We note that the General Counsel's challenge to the Respondent's estimate of those savings omits reference to several factors cited by the judge, i.e., the elimination of costs for maintenance, insurance, and the terminal manager's salary, as well as any reduction in the Respondent's debt load resulting from the sale of the terminal itself. Furthermore, at bottom, the General Counsel's argument represents an attempt to persuade the Board to substitute its own business judgment for the Respondent's. It is well established that the Board will not do so. *Ryder Distribution Resources*, 311 NLRB 814, 816-817 (1993).

*Deborah Jacobson, Esq.*, for the General Counsel.

*Stephen J. Vollmer, Esq.*, of Syracuse, New York, for the Respondent.

*Russell E. Chandler*, Secretary-Treasurer, for the Charging Party.

**DECISION**

**STATEMENT OF THE CASE**

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me in St. Albans, West Virginia, on December 18 and 19, 1996, pursuant to a complaint issued by the Regional Director for Region 9 of the National Labor Relations Board (the Board) on September 30, 1996. The complaint is based on a charge filed by Chauffeurs, Teamsters and Helpers Local Union No. 175, affiliated with the International Brotherhood of Teamsters, AFL-CIO (the Charging Party or the Union) on June 21, 1996. The complaint alleges that Coyne International Enterprises Corp. d/b/a Coyne Textile Services (the Respondent or the Employer) committed violations of Section 8(a)(1) of the National Labor Relations Act (the Act) by threatening "employees by implying that the Charleston terminal might close as a result of the union activities of union steward, Joseph Page" on or about March 19, 1996, by its president, Thomas M. Coyne, and by threatening "employees by informing them that the union activities of union steward Joseph Page had caused the closure of the Charleston terminal" on or about July 29, 1996, by Respondent's terminal manager, Benny J. Syner. The complaint also alleges that Respondent violated Section 8(a)(1) and (3) of the Act by closing its Charleston terminal and transferring its Charleston unit employees to its Huntington, West Virginia facility. The complaint is joined by Respondent's answer filed on October 15, 1996, wherein it denies the commission of the aforesaid allegations and asserts that the decision to close the Charleston terminal was based on legitimate business reasons.

On the entire record in this proceeding, including my observations of the witnesses who testified and after considering the parties' positions at the hearing and their briefs, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

*A. The Business of Respondent*

The complaint alleges, Respondent admits, and I find that Respondent was and has been at all times material, a corporation engaged in the operation of an industrial laundry and uniform rental business for industrial customers at various locations in the United States, including locations in Beckley, Charleston, and Huntington, West Virginia, that during the 12 months preceding the filing of the complaint, Respondent in conducting its operations described above, purchased and received goods valued in excess of \$50,000 which were shipped to its Beckley, Charleston, and Huntington facilities directly from points outside the State of West Virginia, and that at all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

### *B. The Labor Organization*

The complaint alleges, Respondent admits, and I find that at all times material, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

### *C. The Appropriate Unit*

The complaint alleges, Respondent admits, and I find that at all times material, the following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All route salespersons, route jumpers, haul drivers and any other like classifications that may be added employed by [Respondent] at its Charleston and Beckley, West Virginia, terminals, excluding all executives, managers, supervisors, maintenance employees, office and clerical employees, plant protection employees, guards, professional sales and service employees, and collectors.

### *D. The Union's Status as Collective Bargaining Agent of the Unit*

It is further alleged, admitted, and I find that since about 1985 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as the representative by Respondent and that this recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from March 8, 1993, through March 7, 1996.

It is further alleged, admitted, and I find that at all material times, Respondent and the Union maintained in effect and enforced a collective-bargaining agreement, including a grievance procedure with binding arbitration, covering wages, hours, and other terms and conditions of employment of certain employees of Respondent at the Charleston and Beckley terminals.

## II. ALLEGED UNFAIR LABOR PRACTICES

### *Facts<sup>1</sup>*

In its rental industrial laundry business, Coyne provides its customers with uniforms, mats, dust control items, and reusable absorbents. At the time of the hearing it had 16 operating plants and approximately 20 terminals throughout the Eastern United States. It maintains an operating plant in Huntington, West Virginia, with terminals in Beckley and Fairmont, West Virginia, and Betsy Layne, Kentucky. Prior to its closure the Charleston terminal was also part of the Huntington plant operations. Operating plants, such as Huntington, both deliver and process Respondent's products whereas terminals, such as Charleston do not engage in production work but receive processed products from a plant and serve as distribution centers. A plant can perform all of the functions of a terminal. Route salespeople deliver Respondent's products to its customers and service its customers and sell new products and accounts. Respondent also employs "route jumpers" who serve as relief persons when the route salespersons are unable to cover their routes, whether because of vacation, illness or otherwise. This position according to Respondent requires flexibility as route jumpers are required to drive a variety of vehicles on a variety of different routes and often receive little notice of which route they will be required to cover. Respondent's route salespersons

and route jumpers are by a vast majority represented by various Teamsters local unions in its territory in the Eastern United States and are paid on a commission basis with a guaranteed minimum, whereas the Charleston route jumper position had been paid on an hourly basis. Respondent had acquired the West Virginia facilities including the Huntington plant and the Charleston and Beckley terminals. The Charleston and Beckley employees (route salesmen) have been represented by Charging Party (Teamsters Local 175) whereas the Huntington plant employees and route salespeople are represented by Teamsters Local 505. The two groups of employees were in separate bargaining units and were covered by separate bargaining agreements. Employee Joseph Page had worked at the Charleston terminal for 26 years and in the fall of 1995, he held the position of route jumper at the Charleston terminal covering the routes of route salespersons who were not available to run their routes. Under the terms of the Charleston collective-bargaining agreement, the route jumper was paid time and a half for overtime which accrued after the completion of an 8-hour day whereas route salespersons were paid on a commission basis and did not receive overtime pay.

Page had also been the union steward in Charleston since Respondent had purchased the terminal in 1985. He testified, without rebuttal, that during the 10-year period from 1985 to 1995 there had only been 12 to 14 grievances filed at the Charleston terminal but in 1995, there was a surge in grievances with one filed in June and four in October. Three of the five grievances were filed by Page. The five grievances were discussed at a meeting between Respondent's and the Union's representatives on October 31, 1995, with Respondent represented by its vice president, Dennis Bossi, the Huntington acting general manager, Larry Thompson, and the Charleston terminal manager, Benny Joseph Syner, and the Union represented by Local secretary/treasurer, Russell Chandler, steward Page, assistant steward O'Dell Cyrus and employees Paul Stowers and Albert Quigley. Page's October 12, 1995 grievance was discussed; it claimed 9 hours overtime pay was due Page for Terminal Manager Syner's failure to give Page first pick of the open routes and Syner's running of a route himself which involved 9 more hours of overtime than the route Page ran. Page testified that Bossi appeared angry "all red faced and frustrated" when he questioned Page concerning the grievance. However, Bossi agreed at the meeting to pay the grievances. Prior to the end of the meeting Bossi ordered Page to "report to the Beckley terminal for work from here on." Page and Chandler objected and driver Quigley told Bossi that Page would be needed in Charleston to cover his route as he would be off work on Monday. Bossi replied that it did not matter, that Page should report to Beckley and punch in there and "stormed" out of the building with Thompson and Syner. Page testified that when he went to the garage area to get his car after the meeting, he was met by Syner who told him "Bossi said that he was gonna close the Charleston terminal down if the grievances didn't stop." I credit Page's testimony concerning this threat by Syner over that of Syner concerning this incident which will be discussed *infra*.

Page testified that when he reported to Beckley the following Monday, there was no open route for him to run and he was assigned to ride with a Beckley route salesman for 2 weeks until one day when he reported to work at Beckley and was sent to Charleston to work. For the next 3 days he was required to drive from his home in Charleston to Beckley in his own auto-

<sup>1</sup> The following is a composite of the credited testimony of the witnesses.

mobile, punch in, drive Respondent's truck back to Charleston, then run an open route from Charleston using a different truck of Respondent to return to Beckley and then punch out and drive home to Charleston in his personal automobile. After these 3 days Respondent reassigned Page back to the Charleston terminal. Page filed several grievances concerning Bossi's actions. Page testified that Syner told him that "the grievances had better stop." Page's testimony in this regard is un rebutted as Syner did not testify concerning this statement to Page. On November 14, 1995, Bossi sent the Union a letter stating, "I now have approval from Tom Coyne (Respondent's president) to take a serious look at closing Charleston." This was the first written notice to the Union concerning the closing of the Charleston terminal. No evidence of any prior written communication, including internal memoranda, concerning the closing of the Charleston terminal was produced at the hearing.

Following a number of delays as a result of Chandler's illness in January and a heart attack suffered by Bossi the parties met on February 9, 1996, and discussed the possible closure of the Charleston terminal. Chandler contended that Respondent was retaliating by its proposed decision to close Charleston because of the grievances filed by Page. Respondent's representatives contended that the proposed closure was the result of reduced sales volume in Charleston because of the loss of its largest customer (DuPont) and the pending loss of another customer and told the union representatives that labor costs were not involved in this decision. When the Union suggested that the Respondent employ a salesman in an effort to increase volume, Respondent rejected this suggestion although Respondent employed a salesperson in Beckley and Huntington but not at the Charleston terminal.

The collective-bargaining agreement was set to expire on March 7, 1996, and contract negotiation sessions were held on February 19 and 28. Respondent proposed a number of contract changes, including eliminating overtime for the route jumper (Page's position) at Charleston and the initiation of flexible starting times as the contract provided for fixed starting times. It appeared at the hearing that the route jumper's position at Charleston was one of the major concerns of Respondent's proposed contract changes. Respondent's president, Coyne, and legal counsel and board member David O'Hara testified that the route jumper position at Charleston was the only one in Respondent's operations paid on an hourly basis and with a set starting time and paid overtime on a daily basis as a result of a contract with the Union which it had assumed without change when it purchased the Charleston terminal. All of the other route jumper positions at its other facilities were paid on a commission basis and were not paid overtime. In its proposals Respondent also sought to reduce the commission rate for wholesale accounts. The effects of the closure of Charleston were discussed but Respondent did not indicate that its proposed contract changes would influence its decision to close Charleston. On March 8, 1996, the Respondent sent a letter to the Union stating that President Coyne had "reviewed all of the information relative to the Charleston terminal and had decided it should be closed and the routes run out of Huntington." In Bossi's letter of December 21, 1995, he had recommended that Respondent "seriously consider closing the Charleston, West Virginia terminal," as a result of a 28-percent decrease in sales at the Charleston terminal in 1995, and a projected 45-percent decrease in sales in 1996 and that an "actual sales decrease thus far for fiscal year 1996 is 40%." Bossi

also argued in his letter to Coyne that "Charleston has affected the overall performance of Huntington tremendously, both in sales and profitability. The result of a 28-percent decrease in sales has negatively affected the profitability by 6.8 percent resulting, as you well know, in a bottom line loss for Huntington, West Virginia." Bossi also contended in his letter:

If we close Charleston and the employees operate out of Huntington, almost all of the Charleston fixed cost will be saved because there is plenty of room to accommodate the terminal operations in Huntington. In 1995, Huntington's operating profit was significantly below average.

I am in the process of trying to obtain input from Local 175 and our finance people before we make a final decision.

No evidence of any other internal memoranda relating to Respondent's decision to close the facility was presented at the hearing.

The parties next met at a bargaining session on March 19. Chandler asked if Respondent had set the date to close the Charleston terminal, reasserted that the closing was retaliatory and said he would have the Union's attorneys contact Respondent concerning the closing and any issues concerning it. The parties then proceeded to discuss the contract issues and after 2 hours, the parties took a caucus. On their resumption, Coyne informed the union representatives that he had mixed feelings about the closure of Charleston and offered to delay it to permit the Union to "come back to us in another meeting." Coyne also commented that it was difficult to deal with people you can't trust and that he had good relationships with Teamsters all over the country, but not here. Chandler then said that if Coyne had any reason he did not trust him, to tell him as his integrity was important to him. He also told Coyne that the Charleston employees were long-term employees and that he did not want Charleston to close if it could be avoided without a lot of concessions but that the employees had heard that Respondent was closing Charleston because Page would not back off on his grievances. At that point Coyne said, "[T]he biggest problem in Charleston is shop steward Joe Page."

The next bargaining session was held on March 27, and Chandler asked what it would take to keep Charleston open. Coyne enumerated contract changes sought by Respondent such as no increase in health insurance costs, reductions in the number of times employees could bid on routes, elimination of overtime for the route jumper position, and a reduction in the wholesale commission rate. O'Hara said that the constant "bickering and grievances had to stop." O'Hara testified that he had said, "[A]t a bare minimum, you need to resolve, you need to go line by line through this contract and clarify all of these issues that led to these grievances." On instructions from Coyne at the meeting O'Hara sent Chandler a list of "proposed contract changes" on March 29 which were basically the same as those presented at the initial bargaining session of February 19. These proposals were not linked to Respondent's decision regarding the closure when first presented on February 19.

The parties met again for a bargaining session on April 2 and the Union presented a counterproposal. In its response the Union made significant concessions such as changing the route jumper position to commission rather than hourly pay and the elimination of overtime for this position, elimination of the annual bid, restrictions on scheduling of vacations during holiday periods, and some concessions concerning the health insur-

ance plan. However, the Union attached conditions to certain of these concessions and did not propose to accept all of Respondent's proposals without change. Following some discussion Coyne became agitated accused the Union of playing games and left the meeting. O'Hara stayed and told the Union to "revisit" certain key issues necessary to an agreement. Chandler told him that the Union would "look at that" but asked that O'Hara respond to the Union's proposal.

Coyne wrote to Chandler on April 4 and informed him that since Respondent had heard nothing further from the Union after the April 2 meeting, Charleston would be closed on Friday, April 12, which it was. After Charleston was closed all of the Charleston terminal drivers were transferred to Huntington and integrated into the bargaining unit represented by Teamsters Local Union No. 505 which represents the route salespeople at that plant. Page now commutes 130 miles round trip each day, is paid on commission and receives no overtime. The Charleston drivers have been end tailed which will subject them to layoff prior to the Huntington drivers. Former Charleston Terminal Manager Syner became the terminal manager of the Beckley terminal on July 29. On that date employee Ronnie Burleson whose wife had been the Beckley terminal manager immediately prior to being replaced by Syner, testified that he asked Syner, "Are you here to shut this terminal down too?" Syner replied, "No your buddy Joe Page is the one that shut that terminal down." Syner admitted making this statement and testified that he had spoken in anger as he, himself, had made a great deal of effort to keep the Charleston terminal open without success.

David O'Hara, Respondent's general counsel and a member of its board of directors, testified that in the last 3 years, Coyne has been reviewing all of its operations on a broad scale in an effort to economize. This review has been brought on by its primary lending institution, NationsBank, because Coyne did not cash flow one-to-one in 1995 and 1996. Coyne is a 60-year old company which has been a stable company but "grew, in the last 15 years, probably tripled in size in the last 12 years maybe 10 years, took on a lot of debt, it's highly leveraged." "On 115 or 120 million dollars worth of annual volume the corporation only made \$800,000 in 1996." O'Hara and Respondent's president, Tom Coyne, supervise all labor relations matters. The Huntington plant produces the product and it is distributed out of Huntington and several terminals and formerly out of the Charleston terminal as well. The Huntington operation including Charleston was acquired by Respondent in late 1984 or early 1985. Local 505 represents the sales people (drivers) and the inside production employees at Huntington. Local 175 represents the employees at the Beckley terminal which distributes the product from Huntington and formerly represented the employees at Charleston prior to its closure. The entire Huntington operation has lost volume since its acquisition. Charleston was close to Huntington and overnights (routes which cannot be delivered in 1 day and require an overnight stay) to deliver the Huntington products were not required after the closure of Charleston. Charleston had been kept open to maintain a presence in the state capitol of Charleston, West Virginia. There had been several management changes in Charleston which "caused a lot of these grievances that we're talking about here today." There were three route salespersons with a route jumper in Charleston.

O'Hara testified that the purpose of the February 9 meeting was contract negotiations, discussion of the closure and discus-

sion of the pending grievances which needed to be resolved since Bossi had had a heart attack. He opened the meeting and discussed contract issues and he then moved on to talk about the closure. He asked Chandler about the Union's position with regard to the decision and its impact. Chandler asked if a decision had been made and he said, "No." Chandler asked when a decision would be made and he told Chandler, he was not sure. Chandler said that certain other terminals should be considered for closure prior to Charleston. He told Chandler Respondent was looking at all of these locations, but that it was not likely that the Beckley terminal would be closed since this would result in overnights. Chandler suggested putting a salesperson on the routes to increase the volume. He told Chandler that the average full-time salesperson in Respondent's overall system sells \$50 to \$75 of new sales a week and that this would not scratch the surface of the Charleston problem as Respondent was projected to lose DuPont, its largest customer served by the Charleston terminal which accounted for \$5000 worth of sales volume a week. Rather the solution had to be the addition of another major customer which Coyne was working on. He told the Union that although they were willing to negotiate on behalf of the Company, there was no obligation to do so in reliance on the management-rights clause of the labor agreement. He said, "Even though we don't believe we have a legal obligation to discuss the decision, we want to discuss the decision and we want to know the union's position on the decision and its impact." He told them Respondent wanted to know if the employees would follow the work as soon as possible to ensure "a more stable transition." Severance was discussed in a limited way at the meeting. As soon as he had raised the closure, Chandler stated that the closure was in retaliation for the filing of grievances. O'Hara denied this and told Chandler that Coyne did not know about the grievances and that he, himself, did not know much about the grievances. O'Hara told Chandler that the recommendation had been made a year prior thereto by former Coyne Vice President Thomas Hergenroeder and former Huntington General Manager Brice Laughlin. Hergenroeder had told the Union at a meeting that the Charleston terminal would close. Chandler replied that he was aware that closure of Charleston had been discussed before but that he thought Bossi was doing this. O'Hara testified further that Laughlin and Hergenroeder had made a recommendation to close Charleston a year prior to this but that Coyne had refused to discuss it and was critical of Hergenroeder for not maintaining the volume. Coyne did not revisit this issue until Bossi, who had been the prior vice president in charge of this area, became involved with it again in August or September 1995. Bossi looked for a way to solve the overtime problem in Charleston and to economize to keep Charleston from losing even more money. Bossi estimated that the closure of Charleston would save \$120 to \$150 thousand dollars. The projections for Huntington showed it losing as much as \$350,000. In the fall of 1995 volume at Charleston was continuing to go down from early 1995. Bossi had raised the route jumper position in a discussion with O'Hara who told Bossi that under the labor agreement Respondent could transfer the route jumper position between terminals. Approximately 2 months later Bossi transferred the route jumper position to Beckley at a meeting with the Union. Bossi later informed O'Hara that the Union was contending he had transferred the route jumper position to Beckley in retaliation for the grievances. Bossi told O'Hara, that he had become upset at the meeting, walked out and said

the jumper position is transferred. O'Hara advised Bossi that he could see why the Union would consider this to be in retaliation for the grievances as Bossi had become angry and walked out of the meeting. O'Hara advised Bossi "just to drop it (the transfer) because we were going into contract negotiations in two, three months." Bossi then had Page sent back to Charleston.

At the February 9, 1995 meeting at the airport O'Hara told Chandler that absent some new information, it was likely Charleston would be closed. The Union did not offer any specific contract proposals and O'Hara asked for their proposals "in writing, in advance of the next meeting." At this meeting in discussing the grievances, he said, "[I]f those facts turn out to be right we'll pay you," and he took over the handling of the grievances. Tom Coyne gave him authority to decide whether or not to pay them.

At the next meeting held on February 19, 1996, O'Hara opened the meeting and said that they needed to discuss the closure, the grievances and some contract issues. He asked Chandler for the Union's contract proposals and Chandler said he would not give him written proposals prior to receiving Respondent's written proposals. O'Hara and Coyne then met outside the room and O'Hara put the Respondent's proposals in handwritten form, made copies and handed them to the Union committee and then Chandler gave him the Union's proposals. Item 2 on the Respondent's proposals related to the Beckley terminal whose unit employees are also represented by Local 175. Item 4 is entitled "Summary of CTS Proposals on Charleston Shutdown and Its Impact." No proposals were submitted by the Union with respect to the closure decision although there were some questions by the Union as to why another salesperson was not added to the Charleston terminal to increase sales. In this meeting the parties discussed the effects issues in some detail such as following the work and reached agreement that the employees would have to decide at the time of the transfer. Respondent agreed there would be severance pay but offered 1 week for every 2 years of service. Respondent said they would cooperate with the Union in obtaining dovetailing of seniority at Beckley where the work was being transferred with that of the unit employees who were represented by Local 505 but stated that Respondent had no authority under the contract to dovetail seniority. The parties ultimately went to arbitration on the issue. The Respondent and Union next met on February 28, 1996. Coyne was not present and O'Hara was there alone for Respondent. O'Hara opened the meeting and said that they needed to talk about the contract issues, asked whether the Union had anything to say about the closure and impact issues and told the union representatives, he had additional information about the grievances. They discussed the grievances, the 401(k) plan and quality in Charleston and Beckley. It appeared there was agreement that the Charleston employees were going to follow the work and that the parties did not need to discuss severance. Respondent had indicated it would cooperate in dovetailing seniority. They had not yet decided on the formula for severance pay but did agree that the employees would decide at the time of the closure if they were going to follow the work. At every meeting including this one the Union asked that Respondent make a decision regarding closure.

On March 7, 1996, Coyne met with O'Hara and Bossi concerning the closure of Charleston. Coyne let Bossi "talk for about two minutes about the savings he thought it would gener-

ate if he closed it. He turned to me [O'Hara] and said, 'What do you think,' and I said, 'I don't think you've got any choice if you're gonna cash flow this company you can't pass this up.'" Coyne then said, "Close it." Coyne was "grouchy" at the meeting and had told O'Hara repeatedly he did not want to close the Charleston facility noting that it was in the state capitol. O'Hara faxed a letter to the Union on March 8, 1996, informing them of the decision.

On March 19, 1996, O'Hara and Coyne attended another meeting with the Union. O'Hara informed the Union that Respondent had a tentative closure date to deliver out of Charleston up to the next Friday and deliver out of Huntington on the following Monday. O'Hara asked Chandler if he had anything further to say on the closure as Chandler had indicated he had not had an opportunity to discuss it and that O'Hara would hear from his lawyer. O'Hara asked him what he was talking about and Chandler said it would be decided in the courts. It was agreed that the Union's lawyer would contact O'Hara. Subsequently, when the lawyer did not contact him, O'Hara sent a letter to the lawyer with a copy to Chandler indicating that if there was to be any further discussion, it needed to be "right now." Coyne had agreed informally at this meeting to let the closure date "slide a little bit" pending this discussion. During the March 19 meeting there was a caucus and on the parties' return Coyne made a number of different statements such as he was not comfortable dealing with people he could not trust and told the Union not to threaten him with a work stoppage and complained that the other Teamster unions he dealt with always gave him at least 24 to 48 hours notice prior to a work stoppage. During this portion of the meeting Coyne said, "I need to think about what I'm gonna do with this terminal [Charleston]." He then said he would go to the Beckley terminal and "get to the bottom of the quality problems at Beckley." Coyne then told Chandler in reference to the closure of the Charleston terminal, "If you have anything more to offer on this, I'll give you another opportunity to listen." Chandler was upset with the comments about trust as questioning his integrity. He said his integrity was important to him and "without a lot of concessions I want to see the terminal [Charleston] open." Coyne concluded the meeting by telling the Union, representatives, "You've got to get real serious," and did make the statement about Page concerning the route jumper position. Coyne was not aware of the content of the grievances although he heard something of them, but said to move on to the contract issues. O'Hara ordered payment on the grievances and started to resolve them at the first meeting and they were resolved by the end of March.

On March 27, 1996, O'Hara along with Coyne attended a bargaining meeting with the union committee. O'Hara opened the meeting, and the Union requested some clarifications and had information on contract issues. Tom Coyne interrupted this discussion and asked the Union their position on a list of issues such as the route jumper position, medical insurance, wholesaling and others. At some point in time after Coyne's questions, Chandler asked what it would take to keep Charleston open. Coyne replied they needed a "flexible innovative and cooperative atmosphere between management and the Union," they "might be about to find a way to attack this problem and— and see if we can make something work in Charleston." There was then discussion as to what Respondent would do and Coyne replied he did not know but would bring a management team in and that the Union would have to be flexible and cooperative,

and that at a "bare minimum, you need to get these issues out of the way." O'Hara then said you need to go through the contract and clarify all of the issues that led to the grievances. O'Hara also said the starting time for the route jumper could not be set at a fixed time and they could not pay the route jumper on an hourly basis but that this had to be the most flexible position in the terminal. Coyne also mentioned a large account he was working on obtaining which had not yet been secured. Chandler said, "You tell us exactly what we need to do and . . . we'll see where you're going and we will give you a response." Coyne said, "No. I need more. I'm not gonna leave this meeting and delay this date without more of a commitment." Coyne then asked if the Union was willing to move on the route jumper position and said, "[Y]ou're not gonna have this trial period if you can't agree to these things." Chandler then asked whether the Union had to agree to everything and Coyne replied, "No, but you got to agree to a lot of it if you want this trial period." Chandler indicated the Union would be flexible. Coyne then directed O'Hara to inform the Union exactly what would need to be changed in the contract by Friday of that week. O'Hara sent the memo outlining the changes required by Respondent on March 29, 1996.

On April 2, 1996, O'Hara and Coyne met with the Union again. At the start of this meeting the parties discussed clarification on certain issues such as a freeze of medical costs. The Union then caucused and on their return proceeded to go through the itemized list of demands O'Hara had given them and specifically responded to each, agreeing to some but not all. Coyne became upset and left the meeting and O'Hara left the meeting for a few minutes. On his return O'Hara went through each item on the list to which the Union had not agreed and asked why they were important to the bargaining unit to which they responded with their position. He then told them they had "to move on these items," and "if you can move on those items you get a hold of me and I'll go to Tom Coyne and I'll see if he'll delay this." Chandler then said, "We've made a counter-proposal. We want your counter-proposal." O'Hara responded, "This is your counter-proposal. You must move on these items in order to get the delay." O'Hara then told them, "I'll be available this weekend" as the work was to be delivered out of Huntington the following Monday. The Union did not contact O'Hara and the work was ultimately delivered out of Huntington on April 15, 1996, as scheduled.

O'Hara testified that if the Respondent was required to reopen the Charleston terminal, the economies would be reversed and \$125,000 to \$150,000 additional costs would be added to the loss that is projected to occur at the Huntington plant and terminal. In addition Respondent would lose the anticipated \$75,000 to \$100,000 it is projected will be obtained from the sale of the Charleston terminal building. These additional costs will further depress the financial situation at the Huntington operation which was projected to lose \$350,00 in 1996. This would cause the bank and the Board to close the Huntington plant and a consequent layoff of the production workers and Huntington would be reduced to a terminal and the work would be produced out of other plants.

Respondent's president, Thomas Coyne, testified that the industrial laundry business is a highly competitive business and that the profit margin for the Respondent in the last year was less than 1 percent (\$800,000 on between a \$110 to a \$115 million of sales). In late 1994 to early 1995, Respondent's then vice president, Thomas Hergenroder, had initiated the process

of closing the Charleston terminal. Coyne stopped the closure because of his reluctance to close facilities and lay off employees. The problem at Charleston was lack of sales volume. Subsequently Hergenroder left the Company and Vice President Dennis Bossi took over the Charleston facility under his responsibilities. In the fall of 1995, Bossi recommended the closure of Charleston to him. The board of directors and the bank had also "zeroed in on it." In late 1995, Bossi had a serious heart problem and Coyne took over approximately 90 percent of Bossi's responsibilities in addition to his own responsibilities.

In early February 1996, he attended the first meeting with the Union along with O'Hara who told the union representatives that closure "was the big issue" they were there to discuss. Grievances were also discussed at this meeting which he had thought had been settled by O'Hara in response to a prior letter sent him by Chandler. At this meeting Chandler contended that the closure was in retaliation for the filing of grievances by Page. He denied that these grievances were the reason for the closure and notes that Respondent has 24 to 26 Teamster contracts in its system and receives grievances at every plant.

He and O'Hara attended a second meeting about February 19, 1996, with the Union concerning the closure and severance pay. Chandler again stated that the closure was in retaliation for the filing of grievances and asked when the facility was going to close. Coyne was attempting "to get this thing figured out to keep it open." On March 8, 1996, he made the decision to close the Charleston terminal after receiving the recommendations of Bossi, O'Hara and "one of my friends on the Board" to close it. He had not been able "to convince them that I could get the sales back up there and put this thing where it had to be."

He and O'Hara subsequently attended a meeting with the Union on March 19, 1996. In the early part of this meeting there were discussions about various problems and shortages at the Beckley terminal where the Union also represented the bargaining unit. The parties took a caucus and he told O'Hara he wanted to hold off on the closure and have a trial period wherein if the Union would be more flexible, he might be able to go to West Virginia and "buy a piece of business." After the caucus he told the union representatives of this and noticed a positive response from union member O'Dell Cyrus and the rest of the men at the meeting. He also made some comments about trust during this session. He also told Page at that session that he was the problem as he had heard from other employees that Page was holding up an agreement. He was referring to the hourly paid route jumper position held by Page rather than to Page personally as Respondent had inherited this hourly method of paying the route jumper when it originally bought the facility from another company, which hourly rate is more expensive than the payment of commission to route jumpers.

He and O'Hara attended another meeting with the Union on March 27, 1996. They were still attempting to negotiate a contract at Beckley and he had promised the men he would go to Beckley to look at the problems at that facility but had not done so yet. Chandler asked him at this meeting what it would take to keep Charleston open and he told him to review the handwritten suggestions O'Hara had given him previously. Chandler asked if he needed all of them and he said no but he needed the "important issues" and we need "some imagination." "It doesn't have to be the way I say it but if you've got some way or a better way to massage these tough issues then get them out.

You know, its getting late.” Chandler said he would like O’Hara to get the list to Chandler. Chandler said they would get back to him and see what they could do.

He and O’Hara attended another meeting with the Union on April 2, 1996, and they went through the whole list and the Union gave him “an emphatic no on the major issues, medical six hundred going to eight hundred, flexible starting time.” He then asked Chandler if he had anything else to add and he said no. Coyne then said, “O’Hara, I’m out of here. Do what you want to do and I left.” He was upset because he saw no flexibility although he was “going to go to the bank and the Board.” The Union did not get back to him after he left the meeting. He then wrote the letter informing the Union of the closure on April 12, 1996. On cross-examination Coyne testified that sales continued to decrease at the Charleston terminal from the time of Hergenroder’s recommendation to close it in early 1995 until Bossi’s recommendation in the fall of 1995.

Benny Joseph Syner testified as follows: He was a route salesperson for 5 years and became a member of supervision at Charleston in October 1994. He was placed as a terminal manager at the Beckley terminal in late July 1996 following the closure of the Charleston terminal. On July 29, 1996, the day he started as terminal manager at Beckley, Beckley bargaining unit member Ronnie Bureson asked him “if I was going to shut down Beckley in the same manner that I shut down Charleston.” “I said, I did not shut down Charleston. It was your buddy Joe Page.” Syner testified he was very upset when asked this by Bureson as he had worked hard to generate sales for the Charleston terminal and had heard, “they had a second chance to keep the terminal open and they just—it didn’t happen.”

Syner was also questioned concerning a grievance meeting he attended with Bossi on October 31, 1995, and at which Bossi had transferred Page as a route jumper from Charleston to the Beckley terminal. He recalls having a discussion with a bargaining unit employee but is not sure who it was. He thinks it was Cyrus and he Syner told him “that I didn’t see the point in the grievances when they were—when there was previous discussion of the terminal being closed anyway by Mr. Hergenroder who was our vice president at the time and then Brice Laughlin who was then our general manager.” He testified that Bossi did not ever tell him that he was going to close Charleston if the filing of grievances continued. He does not recall ever discussing this issue with Page. I find that this conversation was with Page rather than Cyrus and credit Page’s version supra. He had attended a meeting held by then Vice President Hergenroder in January 1995, with supervisors at Charleston and at which they said they were having trouble with DuPont (the largest customer served by the Charleston terminal) and that “if they lose DuPont, there’s a good possibility it will be closing.”

#### Analysis

I find that Respondent violated Section 8(a)(1) of the Act by the threat issued by Respondent’s president, Thomas Coyne, on March 19, 1996, that Union Steward Joseph Page was the problem in discussing the closure of Charleston which was an implicit reference to the filing of grievances by Page. I have considered Coyne’s explanation that he was merely referring to Page because Page then held the position of the hourly paid route jumper at Charleston which Respondent wanted to change to a commission paid position. I do not credit this explanation. Moreover Coyne’s intent in issuing this statement is not the critical factor for determination of an 8(a)(1) finding. Rather

the issue is whether this statement was likely to be perceived as a threat by employees so as to constitute interference with their Section 7 rights to engage in concerted activities. Under this test I find Coyne’s reference to Page as the problem in the overall discussion of closure was coercive and a violation of Section 8(a)(1) of the Act.

I find that Respondent violated Section 8(a)(1) of the Act by the threat issued by Beckley’s newly appointed Beckley Terminal Manager Syner that the employee could thank Joe Page for the closure of Charleston as it was on its face an apparent reference to Page’s activities as a union steward and was likely to have a coercive effect on the Beckley unit employees to whom it was directed and the exercise of their Section 7 rights. While Syner’s explanation for making the statement may be credible, the effect of his statement was to send a clear message to the Beckley employees to refrain from union activities.

I find the Respondent did not violate the Act by its closure of the Charleston facility. I have carefully examined the positions of the parties and am convinced that the Respondent closed the Charleston facility because of its drastically reduced volume of business attributable to the loss of its largest customer DuPont. The General Counsel points to some background of animus toward Local 175 and its Secretary Treasurer Chandler and Charleston shop steward Joe Page and the filing of grievances by Page and other employees at the Charleston terminal as the true motivation for the recommendation by Vice President Bossi to close the terminal and the decision of Respondent’s president, Coyne to close the terminal. It relies on the two statements attributed to Terminal Manager Syner with respect to the closure of the facility as well as Coyne’s statements and Bossi’s earlier actions in the fall of 1995. However, I find that the Respondent has amply demonstrated that the closure of the facility was a lawful decision made because of reduced volume and an attempt to reduce its expenditures by eliminating the facility and deriving the sale price of the facility, eliminating the overhead of operating the facility and the attendant costs of maintenance, taxes, and insurance as well as the cost of a terminal manager. The record as a whole demonstrates that the Respondent had contemplated the probable need to close this facility as early as February 1995, and this information was made known to the Union and the bargaining unit members. The Respondent engaged in extensive negotiations with the Union for a successor contract for both the Charleston and Beckley bargaining units and offered to and afforded the employees the right to follow the work. While the give and take of negotiations concerning a new contract and President Coyne’s participation and Respondent’s attorney, O’Hara, at the meetings included numerous references to the closure, I do not find that the decision to close the Charleston facility was motivated by Respondent’s animus toward the Union and its steward Page and its employees for the filing of grievances. Rather I credit Coyne that he struggled with the decision and vacillated back and forth as to how to avoid the closure to which he was personally opposed. I find that Bossi’s actions in transferring Page to another terminal without explanation as found above and Syner’s remarks to Page concerning the filing of grievances in October 1995 as well as Coyne’s various statements during bargaining in early 1996 concerning trust and Page being the problem certainly combined to make the Union and bargaining members suspicious that the Charleston terminal was being closed in retaliation for the filing of grievances. I also note the absence of Bossi who made the recommendation

to close commencing in the fall of 1995 which absence was not fully explained although O'Hara and Coyne testified concerning Bossi's health ("died on the table") and his subsequent return to work on a limited basis and the absence of evidence of a clear directive from Respondent's Board of Directors and Respondent's creditor bank. However, I credit Coyne that he was sincerely seeking ways to keep the Charleston facility open (sales, "buy a piece of business") but as a result of his commitments from other of his responsibilities he did not accomplish this. I further note his pique with the Union's perceived failure to meet Respondent's bargaining demands although there was substantial movement on the Union's part as noted by the General Counsel. However at most Respondent merely failed to reverse its decision to close the facility. I do not find that this establishes a prima facie case of a violation of Section 8(a)(3) and (1) of the Act. Assuming arguendo that it did, I find the prima facie case has been rebutted by the preponderance of the evidence. *Wright Line*, 251 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *Nu-Skin International*, 320 NLRB 385 (1995); *Weather Tamer, Inc. v. NLRB*, 676 F.2d 483 (11th Cir. 1982).

#### CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act on or about March 19, 1996, by threatening employees that the Charleston terminal might be closed by Respondent as a result of the union activities of Union Steward Joseph Page.

4. The Respondent violated Section 8(a)(1) of the Act on or about July 29, 1996, by threatening employees by informing them that the union activities of Union Steward Joseph Page had caused the closure of the Charleston terminal.

5. The Respondent did not violate the Act by its closure of its Charleston terminal and the transfer of its Charleston unit employees to its Huntington, West Virginia facility.

#### THE REMEDY

Having found that the Respondent has violated Section 8(a)(1) of the Act it shall be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act and to post the appropriate notice at its Beckley and Huntington facilities and to mail a notice to each of its bargaining unit employees who were employed at its Charleston facility in March 1996 and at its Beckley facility in July 1996, but who are no longer employed at these facilities.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>2</sup>

#### ORDER

The Respondent Coyne International Enterprises, Corp., d/b/a Coyne Textile Services, Huntington, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

<sup>2</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Threatening employees with closure of its facilities because of their engagement in protected concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative actions necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its Huntington and Beckley facilities, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1996.

(b) Within 14 days after service by the Region, mail a copy of the attached notice marked "Appendix" to any employees who were employed at the Charleston or Beckley terminals at the time of the unfair labor practices but who are no longer employed by Respondent.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

#### APPENDIX

##### NOTICE TO EMPLOYEES

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid and protection
- To choose not to engage in any of these concerted activities.

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."



WE WILL NOT threaten you with closure of our facilities for engaging in concerted activities including the filing of grievances.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

COYNE INTERNATIONAL ENTERPRISES CORP., D/B/A  
COYNE TEXTILE SERVICES